REMARKS/ARGUMENTS

In the Office Action dated January 31, 2008, claims 8 – 10 and 14 were allowed and claims 1, 2, 4 – 7, and 15 – 20 were rejected. Applicant hereby requests reconsideration of the application in view of the below-provided remarks. No claims have been amended, added, or canceled.

Allowable Subject Matter

Applicant notes with appreciation that claims 8 – 10 and 14 are allowed.

Claim Rejections

Claims 1, 2, 4 – 7, and 15 – 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bly et al. (U.S. Pat. Publ. No. 2004/0042399 A1, hereinafter Bly) in view of Agrawal et al. (U.S. Pat. Pub. No. 2003/0081546, hereinafter Agrawal).

Claim 1

Claim 1 particularly points out that <u>traffic type bandwidth limitations are received from a customer</u> and that it is the <u>traffic type bandwidth limitations which were received from the customer</u> that are translated to queue-specific bandwidth limitations. Specifically, claim 1 recites:

> "A method for forwarding packet-based traffic through a network node, comprising:
> > *receiving traffic type bandwidth limitations from a customer*;
> > dedicating a group of queues in a network node to the customer;
> > *translating the traffic type bandwidth limitations, which were received from the customer, to queue-specific bandwidth limitations*;
> > performing queue-specific rate shaping on the customer's traffic according to the queue-specific bandwidth limitations respectively associated with the queues; and
> > performing group-specific rate shaping on the customer's traffic according to a group-specific bandwidth limitation associated with the group of queues."
> (emphasis added)

Applicant asserts that a *prima facie* case of obviousness has not been established with respect to claim 1 for the reasons set forth below.

No Clear Articulation of a Reason

Applicant asserts that the rejection of claim 1 is improper because the Office Action does not establish a *prima facie* case of obviousness with respect to claim 1. In order to establish a *prima facie* case of obviousness under 35 U.S.C. 103, the Office Action must present a <u>clear articulation</u> of the reason why the claimed invention would have been obvious. MPEP 2142 (citing *KSR International Co. v. Teleflex Inc.*, 550 U.S. (2007)). Further, the Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), MPEP 2142. The only support provided in the Office action for combining the teachings of Agrawal with the teachings of Bly is:

> "<u>The motivation</u> for implementing a method comprising: receiving a traffic type bandwidth limitation from the customer; translating the traffic type bandwidth limitation to a queue-specific bandwidth limitation of the respective queue-specific bandwidth limitations <u>is that it increases efficiency of the method</u>." (Office action, page 4) (emphasis added)

That is, the Office action cites the general concept of <u>increased efficiency</u> as the only support for the combination of Bly and Agrawal. The general concept of <u>increased efficiency</u> is unsupported by any other facts. Applicant asserts that the statement "it increases efficiency of the method" is a mere conclusory statement that does not provide a clear articulation of the reason why the claimed invention would have been obvious. In particular, the Office action makes no effort to describe how or why implementing a method with the "receiving…" and "translating…" steps of claim 1 would increase efficiency of the method.

Because the Office action does not provide a clear articulation of a reason why the claimed invention would have been obvious, Applicant respectfully submits that the rejection of claim 1 under 35 U.S.C. 103(a) should be withdrawn because the Office Action fails to establish a *prima facie* case of obviousness.

<u>Agrawal does not teach "receiving a traffic type bandwidth limitation from a customer"</u>

The Office action admits that Bly does not teach "receiving traffic type bandwidth limitations from a customer" and "translating the traffic type bandwidth limitations, which were received from the customer, to queue-specific bandwidth limitations" as recited in claim 1. Agrawal is cited for teaching the missing limitations of claim 1. In particular, with respect to the "receiving..." limitation of claim 1, the Office action states:

> "see paragraphs 9, 13, 39, and 73, customers contract with the service provider with Service Level Agreements (SLA), <u>wherein SLA corresponds to traffic type bandwidth limitation.</u>" (Office action, page 4) (emphasis added)

Applicant asserts that establishing Service Level Agreements does not teach "receiving a traffic type bandwidth limitation from a customer" as recited in claim 1. The general concept of a Service Level Agreement teaches only that there is an <u>agreement</u> for a certain level of service. The general concept of a Service Level Agreement does not specify that a customer provides traffic type bandwidth limitations as part of the agreement. For example, a Service Level Agreement could be an agreement between a customer and a service provider that the customer will receive a certain level of service (e.g., gold, silver, or bronze service), where the different levels of service relate to an access priority that is granted to the customer's traffic. Alternatively, a Service Level Agreement may involve an agreement in which a traffic type bandwidth limitation is provided by the service provider not by the customer. As indicated, a Service Level Agreement could take many forms that do not involve the customer providing a traffic type bandwidth limitation to the service provider. Although Agrawal teaches that a customer enters into an agreement with a service provider for classes of service and bandwidths, Agrawal does not teach that traffic type bandwidth limitations <u>are received from the customer</u> as recited in claim 1. Because Agrawal does not teach that traffic type bandwidth limitations <u>are received from the customer</u> as recited in claim 1, Applicants assert that a *prima facie* case of obviousness has not been established.

Claims 2 and 4 – 7 are dependent on claim 1. Applicant asserts that these claims are allowable at least based on an allowable claim 1.

Independent Claim 15

Independent claim 15 includes similar limitations to claim 1. Because of the similarities between claim 1 and claim 15, Applicant asserts that the remarks provided above with reference to claim 1 apply also to claim 15. Accordingly, Applicant asserts that a *prima facie* case of obviousness has not been established with respect to claim 15.

Claims 16 – 20 are dependent on claim 15. Applicant asserts that these claims are allowable at least based on an allowable claim 15.

CONCLUSION

Applicant respectfully requests reconsideration of the claims in view of the remarks made herein. A notice of allowance is earnestly solicited.

At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account **50-3444** pursuant to 37 C.F.R. 1.25. Additionally, please charge any fees to Deposit Account **50-3444** under 37 C.F.R. 1.16, 1.17, 1.19, 1.20 and 1.21.

Respectfully submitted,

/mark a. wilson/

Date: April 29, 2008

Mark A. Wilson
Reg. No. 43,994

Wilson & Ham
PMB: 348
2530 Berryessa Road
San Jose, CA 95132
Phone: (925) 249-1300
Fax: (925) 249-0111